

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RENEW HOME HEALTH,
A DIVISION OF MAXUS
HEALTH CARE PARTNERS, LLC

and

Case 16-CA-260038

ANN BORNSCHLEGL, an individual

Maxie Miller, Esq.,
for the General Counsel.
Amber Rogers, Esq. (Hunton Andrews Kurth LLP),
for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This hearing began on June 28 and concluded on July 1, 2021. The complaint alleged that Renew Home Health, A Division of Maxus Health Care Partners, LLC (Renew) violated §8(a)(1) by: threatening and interrogating its employees; maintaining workplace rules that barred protected activities; and firing Ann Bornschlegl. Renew denies these allegations and also asserts that Bornschlegl was a §2(11) supervisor, who was outside of the Act's coverage.

After a careful review, I find that the complaint is meritorious. On the record, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

Renew offers home health services. It annually derives gross revenue exceeding \$250,000 and purchases and receives at its Fort Worth, Texas office goods exceeding \$5,000 directly from outside of Texas. It, thus, engages in commerce under §2(2), (6) and (7) of the Act.

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

II. UNFAIR LABOR PRACTICES

Renew is led by Chief Operating Officer (COO) Phillip Criswell and Director of Nursing (DON) Johanna Ray. It maintains 9 Texas offices in: Abilene; Decatur; Granbury; Cleburne; Breckenridge; Sherman; Mineral Wells; Fort Worth; and Denton.

Bornschlegl, a registered nurse (RN), was employed by Renew from 2010 to April 28, 2020. She started as an RN Case Manager, was then promoted to a Branch Manager slot from 2017 to roughly July 2018, and then voluntarily returned to a floater RN position until her firing (a.k.a., a floating RN Case Manager).² See (JT Exh. 4). She reported to the Fort Worth Office.

The Fort Worth office services the Dallas-Fort Worth region. It is supervised by Branch Manager Cara Thornwald. It employs: 6 full-time RNs; 6 to 7 part-time RNs, 8 to 10 full-time licensed vocational nurses (LVNs); 20 part-time LVNs; 2 to 3 full-time home health aides (HHAs); and 4 to 5 part-time HHAs.

A. *Bornschlegl's Supervisory Status*

A large portion of the hearing examined whether Bornschlegl was a supervisor. After a careful review of the record, I find that Renew failed to satisfy its burden of proof on this issue and establish that she was supervisory. My analysis follows.

1. Record Evidence

a. *Admissions and Care Plans*

RNs perform admission visits at patients' homes, where they ask intake questions, review medical records and perform physical assessments. These visits last about an hour, excluding transit time. Admissions visits result in the RN drafting a care plan, which itemizes the home health services that a patient requires.³ RNs enter the care plan into OASIS, i.e., a care management software application.⁴ RNs, LVNs, HHAs, physical therapists (PTs) and occupational therapists (OTs) are, thereafter, assigned tasks under the care plan.⁵ All employees (e.g., RNs, LVNs and HHAs) must follow the care plan, until the patient is discharged. Care team members typically do not meet in person or perform simultaneous services. They do, however, share medical notes electronically in OASIS and interact via KMail (i.e., email).

b. *Care Plans – Staff Assignments and Scheduling*

Schedulers assign patient visits, as prescribed by the care plan. Employees receive their

² Throughout this Decision, the terms RN, RN Case Manager and floater RN are used interchangeably.

³ Branch Managers or Clinical Care Coordinators approve the RN, LVN and HHA services listed in the care plan, while a physician generally approves the PT and OT components.

⁴ OASIS has templates for many common care plans. If a patient has diabetes, for example, OASIS has a template.

⁵ OTs and PTs draft independent care plans.

weekly assignments in OASIS. The identity of which employees will be assigned to a patient, once a care plan has been established falls upon the scheduler or Branch Manager.

Although COO Criswell claimed that RNs could assign LVNs and HHAs to or from a care team on the basis of their performance or skills, the record failed to substantiate his testimony on this issue; it was, as a result, not credited.⁶ The record similarly provided no evidence of RNs assigning staff to a particular patient for continuity of care reasons. I find, as a result, that RNs do not assign LVNs or HHAs to or from care teams on the basis of their performance or skills or for continuity of care purposes. I also find that RNs simply identify the type of job classifications that are needed under a care plan, as opposed to assigning specific workers for skill or continuity of care reasons. Or put another way, RNs assign jobs, not people.

c. Biweekly Visits and Disciplinary Authority

RNs visit patients biweekly to assess their status. During these visits, Bornschlegl evaluated if the LVN or HHA was following the care plan, gauged overall patient satisfaction and checked LVN and HHA attendance. Biweekly visits often entailed the RN completing a form, where yes or no boxes involving these issues were checked.⁷ Forms were then relayed to the Branch Manager, who might use negative reports (e.g., poor attendance or care plan compliance issues) as a basis for discipline. See, e.g., (R. Exh. 8).

Bornschlegl stated that Branch Managers disciplined employees and that RNs were not empowered to do so. She added that, although RNs would periodically report misconduct (e.g., HHAs failing to make visits), they would not make disciplinary recommendations or decisions. Although both Branch Manager Thornwald and COO Criswell testified that RNs discipline HHAs by issuing verbal warnings connected to biweekly visits,⁸ the record failed to substantiate their testimony on this issue; such testimony was, accordingly, not credited.⁹ I find, as a result, that RNs do not make disciplinary recommendations or decisions and can only report circumstances to management, which might lead to the disciplining of LVNs and HHAs.

⁶ This appeared to be an effort to make RNs appear more supervisory than reality dictates. COO Criswell's generalized claims about assigning, reassigning and suspending LVNs and HHA was unsupported by the record (i.e., there was no corroborating testimony from a rank-and-file RN about these duties or documentary evidence such as Kmails, charts or other records showing this alleged practice). Criswell fail to even cite a single name or date to support his claims. Moreover, if such evidence actually existed, it seems probable that it would have been plentiful and presented in great depth. Criswell's testimony on these points was, as a result, discredited on the basis of this significant evidentiary lapse.

⁷ Bornschlegl rarely saw LVNs or HHAs in the field during her biweekly or patient care visits. Her reports, as a result, were based on the care plan, notes and patient discussions, as opposed to direct observation of performance.

⁸ It is undisputed that only the Branch Manager or COO can issue discipline beyond a verbal warning (e.g., written warnings, suspensions and terminations).

⁹ The record lacked corroborating documentary evidence of RNs issuing verbal warnings or recommending discipline. Neither Thornwald nor Criswell even cited a single name or testified about a specific event. It seems likely that, if such evidence actually existed, it would have been plentiful and presented in droves. On the basis of this evidentiary lapse, Thornwald's and Criswell's testimonies on these points have been discredited.

d. Hiring, Rewarding, Evaluating, Laying Off and Recalling, and Adjusting Grievances

Branch Managers handle performance appraisals and raises, and reward and promote employees.¹⁰ RNs do not layoff or recall employees. COO Criswell adjusts grievances.

e. RN Job Description

The RN job description provided, inter alia, as follows:

Performs as a leader of the interdisciplinary, clinical care team, Supervises and provides clinical direction to field LVN s and Home Health Aide staff to ensure quality of care. Performs supervisory visits

(R. Exh. 53).

2. Legal Precedent

Under §2(3), a “supervisor” is excluded from the term “employee.” Under §2(11), a “supervisor” is defined as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Individuals are, “statutory supervisors if: 1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in the interest of the employer.” *NLRB v. Kentucky River Community Care*, 532 U. S., 706, 713 (2001). Supervisory status exists when employees either perform a supervisory function or effectively recommend the same. *Id.*

In gauging supervisory status, the Board applies these principles. *First*, the party asserting supervisory status has the burden of proof. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). *Second*, any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999). *Third*, purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). *Fourth*, individuals who possess supervisory authority can be held to be supervisors, even if such authority has not been exercised, as long as the evidence persuasively shows that such authority exists. *Fred Meyer Alaska, Inc.*, 334 NLRB 646 (2001). As a result, job titles, job descriptions or similar documents are not given controlling weight, absent independent evidence of the possession of the described authority. *Golden Crest*

¹⁰ Thornwald could change Fort Worth employees from part-time to full-time and vice versa.

Healthcare Center, supra, 348 NLRB at 731.¹¹ *Fifth*, the Board cautions against finding supervisory authority based only on infrequent instances of its existence. Id. at 730, fn.9. *Finally*, the exercise of supervisory indicia must be in the interest of the employer and involve independent judgment. Accordingly, “the exercise of some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee.” *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988), quoting *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985). Thus, “the Board ... exercise[s] caution not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect.” *Oakwood*, supra, 348 NLRB at 688.

3. Analysis

Renew failed to show that Bornschlegl’s Floater RN position was supervisory. RNs do not assign or discipline employees in a way that meets the Board’s supervisory benchmarks.¹²

a. Assigning Work

RNs do not exercise supervisory authority in assigning work. The Board defined assigning work as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood*, supra, 348 NLRB at 689.

i. Places, Tasks and Times

Although RNs create care plans, which generally describe the services that a patient requires and the job titles that will perform such services, the creation of such care plans in this manner is not a supervisory assignment of work under *Oakwood*. Specifically, care plans do not delegate assignments to *specific LVNS and HHAs at specified locations and times*, which is the level of delegation that *Oakwood* requires in order to find that an employee is making assignments in a supervisory manner. Moreover, the task of scheduling specific LVNs and HAAs to particular patients is performed by the scheduler and Branch Manager Thornwald. As noted, RNs play no role in this critical part of the assignment process, and thus, do not “designat[e] an employee to a place ... [or] time ... or giv[e] significant overall duties ... to an employee.” Or put another way, RNs do not reach the assigning benchmark in *Oakwood* because they do not say *who* goes where and when.

¹¹ See also *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusory statements are not enough).

¹² Renew contends that RNs assign and discipline in a supervisory manner. The record does not suggest other supervisory powers (i.e., Branch Managers handle performance appraisals for LVNs and HHAs and independently reward, promote or take other personnel actions on the basis of such appraisals; Branch Managers handle payroll and wage matters and otherwise reward LVNs and HHAs, without RN intervention; and RNs cannot not layoff, recall, hire or adjust grievances).

ii. Independent Judgment

RNs do not exercise independent judgment, when making care plan assignments. In *Oakwood*, the Board found “if the registered nurse weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel, the nurse’s assignment involves ... independent judgment.” *Id.* By way of example, RNs use independent judgment, when they assign nurses adept at dialysis to kidney patients, assign skilled chemotherapy nurses to oncology patients, or trained pediatric nurses to pediatric cases. *Id.* By way of further example, RNs also employ independent judgment, when they repeatedly assign specific nurses to the same resident in order to ensure continuity of care. Finally, by way of contrast, the Board found that emergency room charge nurses did not exercise independent judgment in *Oakwood* because they did not “take into account patient acuity or nursing skill in making patient care assignments” and the record did not demonstrate “discretion to choose between meaningful choices on the part of charge nurses in the emergency room.” *Id.*

For multiple reasons, Renew’s RNs do not exercise independent judgment, when making care plan assignments. *First*, as noted, they do not: match LVNs and HHAs with specific skills to patients with specific care needs; or match particular LVNs and HHAs for continuity of care reasons. *Second*, overall assignments to LVNs and HHAs are generally based upon an OASIS template, which decides the personnel breakdown for the RNs, and which must still be approved by the Branch Manager. As a result, care plan assignments that involve the usage of the OASIS template do not involve a “degree of discretion that rises above routine or clerical.” *Oakwood*, supra, 348 NLRB at 693. *Finally*, there is no evidence that Renew’s RNs can call an LVN or HHA into work, extend their assigned shifts based upon patient demands, or approve overtime on the basis of such extended assignments. These factors all cut against a supervisory finding.

In sum, Renew’s RNs are like *Oakwood*’s non-supervisory emergency charge nurses, who similarly did not “take into account patient acuity or nursing skill in making patient care assignments.” Renew’s RNs solely identify the type of personnel needed in the care plan, but, do not exercise independent judgment by “weigh[ing] the individualized condition and needs of a patient against the skills or special training of available nursing personnel.”¹³ As a result, they do not exercise independent judgment in making care plan assignments.

b. Disciplinary Authority

RNs do not use independent judgment to discipline employees. To establish that an employee has supervisory status based on their authority to effectively recommend discipline, a party must provide specific evidence of that authority. *Golden Crest Healthcare Center*, supra,

¹³ Although Criswell and Thornwald contended that RNs identify LVNs and HHAs with specific skills to be assigned to particular patients, this testimony was not credited. As noted, these statements were wholly uncorroborated, and it became apparent that, if such evidence actually existed, it would have been presented in droves via the testimony of RNs who said that they actually did this, and by documents memorializing such personnel requests. Such evidence was a potential gamechanger. Moreover, even if these statements were credited, they that would still be insufficient, in isolation, to confer supervisory status. See, e.g., *Golden Crest Healthcare Center*, supra, 348 NLRB at 731 (2006) (purely conclusory evidence is not sufficient to establish supervisory status); *Volair Contractors, Inc.*, supra, 341 NLRB at 675; *Sears, Roebuck & Co.*, supra, 304 NLRB at 194.

348 NLRB at 730 fn.10. The record must show that the employees' role is not merely reportorial. *Berthold Nursing Care Center*, 351 NLRB 27, 28 (2007). Their recommendation must not be subject to independent investigation by upper management. *Trinity Continuing Care Services*, 360 NLRB No. 4, slip op. at 4 (2013) (not reported in bound volumes). Further, the mere authority to warn an employee, without a tangible effect on that employees' job status is insufficient to confer supervisory status; at a minimum, the action must lay a foundation for future discipline against an employee. *Berthold Nursing Care Center*, supra, 351 NLRB at 28.

The record fails to establish that Renew's RNs use independent judgment to discipline LVNs and HHAs. Renew contends that an RN's biweekly meeting reports are disciplinary in nature because: (1) RN's periodically recommend verbal warnings on the basis of these reports; and (2) their reports can serve as the basis for discipline (e.g., if they raise serious attendance or performance issues). Renew's contentions are flawed for several reasons. *First*, as noted, there is no documentary or specific testimonial evidence of RNs ever issuing verbal warnings to LVNs and HHAs as a result of a biweekly meeting.¹⁴ *Second*, there is no evidence of RNs being held accountable for failing to issue verbal warnings. *Third*, there is no evidence of RNs holding disciplinary meetings with LVNs or HHAs.¹⁵ *Fourth*, there is no evidence that an RN's counseling, if we were to momentarily assume one actually existed, was ever used as a basis for progressive discipline. See *Trinity Continuing Care Services*, supra, 360 NLRB No. 4, slip op. at 4 (holding that unit managers were not supervisors where corrective action notices were not shown to form the foundation of future disciplinary action in progressive discipline policy). *Fifth*, it appears that, at best, RNs serve a reporting function, which might ultimately serve as the basis for an independent disciplinary investigation and evaluation by management; this reporting function is not, however, the exercise of a supervisory function. *Berthold Nursing Care Center*, supra; *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002) (holding that "[r]eporting on incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations."). In sum, RNs do not discipline LVNs and HHAs with independent judgment.¹⁶

c. Secondary Indicia of Supervisory Status

The RN job descriptions, which describes RNs as supervisors and labels biweekly visits as "supervisory visits," is insufficient to confer supervisory status. Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent

¹⁴ Although Criswell and Thornwald contended that RNs verbally warn and counsel identify LVNs and HHAs, this testimony was not credited. As noted, these statements were wholly uncorroborated, and it became apparent that, if such evidence actually existed, it would have been presented in droves via the testimony of RNs who actually disciplined LVNs and HHAs and/or by documents memorializing such discipline. Moreover, even if these conclusory statements were credited, it is noteworthy that they would still be insufficient in isolation to confer supervisory status. See, e.g., *Golden Crest Healthcare Center*, supra; *Sears, Roebuck & Co.*, supra.

¹⁵ On the contrary, the record mostly shows that it is rare for RNs to even personally interact with LVNs or HHAs beyond participating in case conference meetings, which are not disciplinary in nature.

¹⁶ Renew did offer counseling, disciplinary and change of status records that Bornschlegl signed in June and July 2018 in her capacity as a supervisory Branch Manager. See, e.g., (R. Exhs. 9-11). These records do not, however, establish Bornschlegl's supervisory status as a floater RN, given that Bornschlegl left her the Branch Manager job in roughly July 2018, and then returned to the rank-and-file RN slot that she held when she was fired.

independent evidence of the possession of the described authority. *Golden Crest Healthcare Center*, supra; *Chevron Shipping Co.*, supra. The RN job description, as a result, fails to adequately confer supervisory status, in the absence of independent evidence of assigning, disciplining or some other supervisory authority.

d. Conclusion

Renew failed to meet its burden of proving that Bornschlegl was a §2(11) supervisor. It failed to show that she assigned or disciplined LVNs and HHAs in a way that met the Board's supervisory benchmarks. As a result, she was at, all relevant times, an employee, who was covered by the Act. As a result, it is necessary to now evaluate whether her termination was unlawful. My analysis of the validity of her firing and the other §8(a)(1) allegations follows.

B. Bornschlegl's Termination and Other Complaint Allegations

1. Record Evidence

Bornschlegl was a long-term employee, who was employed by Renew as both a rank-and-file RN, and supervisory Branch Manager. She left the Branch Manager slot voluntarily and trained her replacement before returning to the RN position she held prior to her firing.

She received some minor discipline prior before her firing. In August 2016, she received a counseling. (R. Exh. 38). In August 2019, she received a counseling for voicing dissatisfaction. (R. Exh. 47). At that time, she was directed to avoid talking to her coworkers about workplace issues and to bring her concerns directly to management. (Id.).

Overall, Bornschlegl was a high-quality RN, who delivered excellent patient care. During opening statements, Renew's counsel eloquently described her professionalism in this way:

[Y]ou're not going to hear facts disputing whether or not she was a good and competent nurse. You will see that the company repeatedly has said in writing, and you will hear testimony from them, that they thought Ms. Bornschlegl was a topnotch, very effective nurse. And I truly believe that they sincerely believe that.

(Tr. 23-24).

This case is, as a result, not about Bornschlegl's abilities as an RN or performance deficiencies. It is entirely about her complaints to Renew about health and safety issues related to COVID-19 that she made on behalf of herself and her colleagues. It is about whether she engaged in misconduct in making these complaints, or whether this was simply a case of "shooting the messenger."¹⁷ A discussion of the COVID-19 policies that gave rise to her group complaints and the chronology of events that led to her firing follows.

¹⁷ As stated in *Antigone* by Sophocles, "no man delights in the bearer of bad news."

a. COVID-19 Policies

In early-2020,¹⁸ Renew instituted several new workplace policies, which covered personal protective equipment (PPE), the temporary closure of field offices, holding case conferences remotely, increasing KMail usage for social distancing purposes, and paying employees a \$10 per visit stipend for seeing COVID-19 patients. Bornschlegl recalled that the pandemic and these policies prompted several discussions amongst her colleagues concerning their compromised workplace health and safety, their inability to visit assisted living facilities due to quarantining measures, PPE shortages and inadequate compensation for visiting COVID-19 patients.

b. April 16 – Case Conference Meeting and Thornwald Text

On this date, Branch Manager Cara Thornwald held a case conference meeting. The meeting closing with employees peppering her with questions about Renew’s COVID-19 policies, including questions related to workers compensation insurance, PPE availability and creating a COVID-19 task force. Following the meeting, Thornwald and Bornschlegl exchanged texts about these issues, which resulted in Thornwald issuing the following guidance to Bornschlegl:

I appreciate your ideas ..., please bring them to me individually in order to avoid ... a morale problem.

(GC Exh. 2). In hindsight, this text foreshadowed Renew’s heightened sensitivity at that time, when presented with criticism regarding its handling of the COVID-19 crisis.

c. April 25 – Bornschlegl Texts Coworkers About Workplace COVID-19 Issues

Bornschlegl texted five coworkers and discussed their concerns about Renew’s COVID-19 policies and their overall workplace safety. (GC Exh. 6). This resulted in Bornschlegl, Moore, Estes and Armstrong debating, inter alia: the risks of making COVID-19 visits; the inadequacy of a \$10 hazard payment; and the ongoing PPE shortage. Their group chat ended with Bornschlegl suggesting that they relay their concerns to Renew, and a group commitment to do so. This path would ultimately prove to be the beginning of the end for Bornschlegl.

d. April 26 – Bornschlegl’s Email

After a series of texts with her coworkers regarding their health and safety concerns, Bornschlegl sent this email to COO Criswell, DON Ray and Branch Manager Thornwald:

At the ... conference, we ... asked questions ... about Renew’s response to COVID-19 This KMail ... [is] a group effort We ... want [to] ...have our suggestions considered and voice ... [these] concerns.

¹⁸ All dates hereinafter are in 2020, unless otherwise stated.

- 1) Establish a COVID team and supply all COVID+ patients with their own equipment This will decrease the ... number of employees exposed
- 2) Hazard pay, PTO and loss of income [A] \$10 bonus per visit is not sufficient
- 3) ... We all know PPE is in short supply nationwide please don't require us to choose between our jobs and our lives if adequate PPE is not available.
- 4) Lack of empathy

In conclusion, we would appreciate a more understanding ... approach

Signed

Ann Bornschlegl	Carrie Moore	Brittany Petrie
Elizabeth Armstrong	Vickie Duff	Susan Estes
Margaret Carter	Brenda VanBeckum	Dana Brown
Shari Mallory	Gina Anderton	Debbie Short

(GC Exh. 9). This KMail prompted a hostile and retaliatory reaction from Renew.

On April 27, Branch Manager Thornwald emailed the employees who signed the KMail to investigate whether they, “were aware of the verbiage used within this communication,” in a less than subtle effort to see if Bornschlegl could be held accountable for the group complaint. See, e.g., (GC Exh. 13, 16). Even though 10 of the 11 employees replied that they agreed with Bornschlegl and that she spoke for them as a collective group, Thornwald’s inquiry ultimately revealed a controversy regarding Anderton, which would offer Renew some cover to “shoot the messenger” and eradicate Bornschlegl.

e. Anderton Controversy

Anderton provided Renew with opportunity; she gave them a rationale to eliminate Bornschlegl, inasmuch as it eventually discovered that Anderton never expressly agreed to allow Bornschlegl to include her name on the controversial KMail. Moreover, before sending out the KMail, Bornschlegl circulated a draft to all employees, including Anderton. (GC Exh. 7). Thereafter, everyone, except Anderton, expressly agreed to have their names included on the KMail. (GC Exhs. 5,7). Although Anderton was initially silent, Bornschlegl re-texted her prior to sending the KMail and again asked if she wanted to be included. (R. Exh. 54). Anderton texted back that she would review the draft and reply later; at no time, however, did Anderton express disagreement. Id. Anderton, thereafter, failed to follow-up; and Bornschlegl, unfortunately, failed to make further inquiry and errantly assumed consent.¹⁹ Although Anderton admitted at the hearing that she never expressly rejected Bornschlegl and was silent (i.e., the texts also

¹⁹ Bornschlegl explained that, although she had initially thought that Anderton had consented, she eventually realized she did not and that it was an error to include her. She later texted an apology to Anderton. (R. Exh. 54).

demonstrate this point), she nevertheless lied to COO Criswell and DON Ray during the course of their workplace investigation and fraudulently claimed that she told Bornschlegl, “no thanks,” which never occurred and, of course, painted Bornschlegl in a harsher light.²⁰ (GC Exh. 17).

5 *f. April 28 – Bornschlegl’s Termination Meeting*

10 Bornschlegl, on this date, was called to a meeting with COO Criswell, Branch Manager Thornwald and COO Ray. She was first questioned about the origin of the KMail and replied that it resulted from a workplace dialogue. When DON Ray asked to review Bornschlegl’s texts with her coworkers about the subject, she declined and explained that they were personal. The meeting continued with DON Ray stating that, because Bornschlegl was previously disciplined for talking to coworkers, the KMail made her a repeat offender, who should have first discussed her concerns with management. She stated that COO Ray then read from her August 2019 counseling, which stated as follows:

15 Bornschlegl will immediately refrain from unprofessional or un-businesslike behaviors that are against agency policy [S]he will [also] agree to bring any grievances ... to her supervisor for resolution and avoid discussing her grievances with her coworkers. The agency ... consider[s] such behaviors ... as an attempt to
20 create a culture of discord or hostile work environment.

Failure to meet the requirements of this disciplinary action plan may result in further disciplinary action, up to and including termination.

25 (GC Exh. 15). The meeting closed with Bornschlegl’s firing.

g. February 5, 2021 – Texas Workforce Commission – Appeal Tribunal

30 Although Renew challenged her application for unemployment insurance (UI) benefits, Bornschlegl’s application was ultimately granted. During the UI proceeding, Renew provided a detailed written rationale to the Texas Workforce Commission regarding its discharge rationale:

- 35 1) [She] ... violated the [terms of a] ... discipline[e] ... dated 8/23/19.
2) [She] ... reached out to ... Anderton ... and requested that ... to include her name on a document that [she would] ... send to Agency management [Although] Anderton [replied] ... "No Thank You" [,] Bornschlegl [still] signed ... her name ... without her consent.

40 (GC Exh. 19).

²⁰ Anderton, to date, has not been disciplined for providing false information to management during a workplace investigation, which seems more serious than Bornschlegl’s alleged transgression. (Tr. 328).

h. Relevant Workplace Policies

i. Falsification Policy and Other Employee Disciplines

Renew's Employee Handbook provides, in relevant part, as follows:

BEHAVIORAL BREACHES

Disciplinary action, up to and including termination, may be taken for violations of standards including, but not limited to the following:

- Falsifying document, DVRs, payroll summaries, time sheets,

(R. Exh. 41).

Bornschlegl contended that her error regarding Anderton was not falsification, and that she was only aware of employees being disciplined for falsifying time records (e.g., recording a visit that was not made) or medical records (e.g., recording services that were not performed). Allman and DON Ray both insisted that, although other employees have historically been disciplined for falsifying time records and services performed, a KMail is a record and signing someone's name to it without consent, irrespective of the content of the email, is the falsification of a medical record. As will be discussed in the analysis section that follows, Renew's position that any email rises to the level of a medical record is quite a stretch to say the least.

Renew provided disciplinary records of employees who were fired for falsification; they are described in the chart below:

Date	Employee	Penalty	Misconduct
12/22/2015	A. Milligan	Termination	She "falsif[ied] DVR and documentation," (i.e., HHA reported visits that were not made and falsified patient signatures).
8/23/2017	B. Matlock	Termination	He created "fraudulent documentation" (i.e., PT reported that he performed PT services when he did not and documented visits that were not performed).
4/4/17	B. Matlock	Written/Final Warning	Recorded lengthier patient visits than had been performed.
12/4/2014	J. Seltzer	Termination	LVN documented visits that were never performed.
6/19/2017	L. Lavender	Termination	LVN documented visits that were never performed.

(R. Exh. 39). Renew failed to show that it has fired, or ever disciplined, anyone under the heading of falsification for engaging in the type of conduct at issue in Bornschlegl's case.

ii. Progressive Discipline Policy

Renew maintains a disciplinary policy, which provides the following general disciplinary ladder: verbal warning; written warning; disciplinary action plan/probation; disciplinary suspension; and termination. (GC Exh. 31). Renew reserves the right, however, to proceed directly to termination, "if the offense is serious in nature." (Id.). The policy further states that, "any two written reprimands within a 12-month period will make the employee subject to severe disciplinary action including suspension or discharge." (Id.).

2. Analysis

The complaint alleges that Renew violated §8(a)(1) in the following ways: on April 16, instructing an employee to bring all of her workplace concerns only to management; on April 27 and 28, interrogating employees; on April 28, instructing an employee that she could not speak to other employees about workplace concerns; maintaining an overly broad rule requiring employees to bring their grievances directly to management and to refrain from discussing such grievances collectively; and, on April 28, firing Bornschlegl because of her protected activities. As will be discussed, each of these allegations are meritorious.

a. §8(a)(1) – Statements

i. April 16 – Thornwald Text²¹

Renew violated §8(a)(1), when Thornwald texted Bornschlegl to, “please bring ... [future grievances] to me individually in order to avoid creating a morale problem.” (GC Exh. 2). This statement unlawfully limited Bornschlegl’s right to discuss workplace issues amongst her colleagues. See. e.g., *Alternative Energy Applications*, 361 NLRB No. 139, slip op. at 1 (2014), citing *Waco, Inc.*, 273 NLRB 746, 747-748 (1984).

ii. April 27 and 28 – Interrogation Allegations²²

Renew violated §8(a)(1) by interrogating employees. On April 27, Branch Manager Thornwald, sent a KMail to employees, which asked, if they “were aware of the verbiage used within” in the KMail? On April 28, at the termination meeting, DON Ray asked Bornschlegl if she could review the employee texts, which led to the KMail?

In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors determine whether an exchange is an unlawful interrogation:

- (1) The background, i.e. is there a history of employer hostility and discrimination?
- (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
- (3) The identity of the questioner, i.e. how high was he in the company hierarchy?
- (4) Place and method of interrogation, e.g. was employee called from work to the boss’s office? Was there an atmosphere of unnatural formality?
- (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

²¹ This allegation is pled under complaint ¶¶6(a) and 8.

²² This allegation is pled under complaint ¶¶6(b) and (c), and 8.

In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at page 940.

Thornwald's April 27 KMail to employees was unlawful; she interrogated them about their agreement with the KMail and protected activities connected to workplace health and safety. These factors are controlling: (1) Branch Manager Thornwald was empowered to discipline them for collaborating with Bornschlegl and (2) Bornschlegl was ultimately fired for the protected activity that Thornwald asked about. On April 28, DON Ray unlawfully interrogated Bornschlegl, when she asked to see the employee texts connected to the KMail. These factors are controlling: (1) DON Ray is an upper-level manager with disciplinary authority; and (2) Bornschlegl was, thereafter, fired for engaging in the protected activities that DON Ray was asking about. In sum, both inquiries were hostile to protected workplace discussions and reasonably tended to coerce employees from engaging in other protected concerted activities of this variety. Both questions, in the context of the other illegal actions present herein, sent the very clear message to employees that Renew could retaliate against them for raising and discussing valid workplace grievances.

iii. April 28 – Ray Statement²³

Renew violated §8(a)(1), when Ray told Bornschlegl that she could not bring grievances and concerns to her coworkers on April 28. *Alternative Energy Applications*, supra.

b. §8(a)(1) – Rule Restricting Workers from Discussing Grievances²⁴

Since 2019 and continuing thereafter, Renew has violated §8(a)(1) by maintaining and orally enforcing a rule restricting employees from discussing workplace grievances amongst themselves. In August 2019, Renew threatened Bornschlegl with further disciplinary action and warned her to, "bring any grievances ... to her supervisor for resolution and avoid discussing her grievances with her coworkers." (GC Exh. 15). Renew alerted her that, "[t]he agency ... consider[s] such behaviors ... as an attempt to create a culture of discord or hostile work environment, and that, "failure to meet the[se] requirements ... may result in further disciplinary action, up to and including termination." (Id.). On April 16, Thornwald applied this rule, when she unlawfully directed Bornschlegl to "bring ... [future workplace concerns] to [her] ... individually in order to avoid creating a morale problem." (GC Exh. 2). On April 28, Renew again employed the rule, when it fired Bornschlegl for failing to comply with her August 2019 discipline requiring her to bring grievances to her supervisor and not to discuss such issues with coworkers. Through these actions, Renew has unlawfully maintained a rule, which effectively bars employees from discussing wages and workplace conditions amongst themselves. See. e.g.,

²³ This allegation is pled under complaint ¶¶6(d) and 8.

²⁴ This allegation is pled under complaint ¶¶7(a) to (c), and 8.

AFSCME Local 5, 364 NLRB No. 65, slip op. at 3-4 (2016) (work rule requiring employees to present any concerns directly to the president); *Affinity Medical Center*, 362 NLRB 654, 672 fn. 41 (2015) (an employer cannot require employees to take all work-related complaints to their employer through “the chain of command”); *Valley Hospital Medical Center*, 351 NLRB 1250, 1254 (2007) (an employer may not require employees to take all work-related concerns through a specific internal process), enfd. sub nom. *Nevada Service Employees Union, Local 1107*, 358 Fed. Appx. 783 (9th Cir. 2009).

c. §8(a)(1) – Bornschlegl’s Discharge²⁵

Renew violated §8(a)(1) by firing Bornschlegl. The framework for analyzing §8(a)(1) discharges is set out in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), which requires the General Counsel (the GC) to show, by a preponderance of the evidence, that the worker’s protected conduct was a motivating factor in the adverse action. This initial burden is satisfied by showing protected activity, knowledge and animus. If the GC meets this initial burden, the burden shifts to the employer to prove that it would have taken the same adverse action, absent the protected activity. *Mesker Door*, 357 NLRB 591–92 (2011). The employer cannot meet its burden, however, merely by showing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action, absent the protected conduct. *Bruce Packing Co.*, 357 NLRB 1084, 1086, 1087 (2011). If the employer’s proffered reasons are pretextual (i.e., either false or not actually relied on), it fails to show that it would have taken the same action for those reasons regardless of the protected conduct. *Metropolitan Transportation Services*, 351 NLRB 657, 659 (2007). On the other hand, further analysis is required if the defense is one of “dual motivation,” i.e., the employer avers that, even if an invalid reason played some part in its motivation, it would have still taken the same action for permissible reasons. *Palace Sports & Entertainment, Inc. v. NLRB*, 411 F.3d 212, 223 (D.C. Cir. 2005).

i. Prima Facie Case

The GC met its initial burden. It thoroughly established protected activity, knowledge and animus.

Regarding protected activity, the analysis is objective and based upon the totality of the circumstances. *Castro Valley Animal Hospital*, 370 NLRB No. 80, slip op. at 12 (2021). Employees engage in protected activity, when they speak to colleagues about shared workplace concerns.²⁶ *Parkview Lounge, LLC d/b/a Ascent Lounge*, 366 NLRB No. 71, slip op. at (2018), enfd. 790 Fed. Appx. 256 (2d Cir. 2019). Bornschlegl repeatedly engaged in protected activity, when she communicated with her coworkers about the COVID-19 policy and sent a KMail to management stating their concerns. See, e.g., *Timekeeping Systems, Inc.*, 323 NLRB 244, 244

²⁵ This allegation is pled under complaint ¶¶7(d) to (f), and 8.

²⁶ Individualized complaints are also considered protected concerted activity, when the goal is to improve working conditions for multiple employees. *Wal-Mart Stores, Inc.*, 341 NLRB 796, 804 fn. 9 (2004), enfd. 137 Fed. Appx. 360 (D.C. Cir. 2005), citing *Hanson Chevrolet*, 237 NLRB 584 (1978). In addition, concertedness is not contingent upon a shared objective amongst employees. *Marburn Academy, Inc.*, 368 NLRB No. 38 (2019).

(1997)(emails about workplace grievances are protected activity).

Regarding knowledge, management received the April 26 KMail, which communicated Bornschlegl's protected activity. Therefore, knowledge is effectively undisputed.

There is substantial evidence of animus towards Bornschlegl's protected activity. She was expressly fired for her protected activity, i.e., discussing COVID-19 grievances with coworkers instead of management in violation of her 2019 discipline. Renew also exhibited animus when: it unlawfully interrogated employees about their protected activities; Ray and Thornwald told Bornschlegl that she could not raise workplace concerns with coworkers; and Renew maintained its rule barring employees from discussing grievances with coworkers.

ii. Renew's Defense

Renew failed to show that it would have fired Bornschlegl in the absence of her protected activity. Bornschlegl was allegedly fired for two reasons: (1) violating the terms of her 2019 discipline, which required her to "bring any grievances ... to her supervisor for resolution and avoid discussing her grievances with her coworkers"; and (2) including Anderton's name on a document that was sent management, after Anderton told her "no thank you." (GC Exhs. 15, 19). I will now discuss why each reason is bogus.

Renew's contention that Bornschlegl was validly fired because she included Anderton's name on the KMail after being expressly told not to do so is deeply flawed. *First*, Anderton never expressly told her anything; this means that Bornschlegl did not commit the workplace crime that she was charged with (i.e., placing someone's name on a KMail after being told not to).²⁷ Bornschlegl was, thus, negligent at worst in including Anderton, which is vastly less culpable than the crime of intent that she was fired for. *Second*, even though Anderton was, arguably more culpable than Bornschlegl (i.e., she lied to management during a workplace investigation), Renew never took action against her. Anderton was deceptive about this point and even lied to management about this issue through the trial (i.e., Allman and Thornwald both claimed that they first learned that Anderton never said, "no thanks" at the hearing), even though she was continuously aware that her lie caused someone to lose their job. Simply put, it is appalling that Renew fired Bornschlegl and held Anderton harmless, even though her actions were intentional, involved lying to her employer, occurred over a prolonged period, caused a long-term and highly capable RN to be fired and triggered protracted litigation costs for her employer.²⁸ Bornschlegl did not do any these things; she was just worried about workplace

²⁷ It is noteworthy that Renew's evidence of wrongdoing was a direct byproduct of its unlawful interrogation of Anderton via Thornwald's KMail. It seems logical that Renew should not be permitted to utilize this "fruit of the poisonous tree" evidence to then condemn Bornschlegl's protected concerted activity. See, e.g., *Fivecap, Inc.*, 331 NLRB 1165, 1169-70 (2000)(applying a "fruit of the poisonous tree" analysis); *Opryland Hotel*, 323 NLRB 723, 728-729 (1997)(disciplinary action taken pursuant to an unlawful no-solicitation rule is unlawful); *McClain of Georgia, Inc.*, 322 NLRB 367, 377 (1996)(discipline imposed as a result of a change in drug testing policy implemented in retaliation for union activity is unlawful; "where a policy or rule is changed in retaliation for union activity by some employees, every individual affected by the changed policy is discriminated against, regardless of their individual union sentiments").

²⁸ Renew cannot reasonably claim that it should not be held accountable for not disciplining Anderton because it

safety during the pandemic and errantly included an 11th coworker on a list; Renew's ongoing obliviousness to this inequity eviscerates its claims of good faith. *Third*, Renew's claim that Bornschlegl falsified a medical record is a significant stretch, given that the KMail at issue was not relied upon for patient care or third-party billing purposes.²⁹ Renew basically asserts that *every* email sent by health care employees to their employer are medical records; this position defies logic.³⁰ *Fourth*, the fact that Renew's gut reaction to its employees' valid worries about COVID-19 and their valid health concerns was to first investigate and then fire promptly the messenger further suggests invidious intent and bad faith. It's unclear if Renew actually took any action to address these legitimate inquiries, beyond ridding the workplace of the messenger. *Fifth*, in firing Bornschlegl, Renew failed to apply its own progressive discipline policy in a situation involving a deeply minor error. Simply put, what was the great harm that Bornschlegl caused Renew by errantly Anderton's name to a KMail, when 10 other employees agreed with her valid COVID-19 concerns? If Renew's aims were valid, it could have easily followed its own progressive discipline plan by issuing a lesser penalty, while still retaining a long-term employee that it classified as a standout RN. It's failure to take an even-handed approach in accordance with its own policies belies good faith. In sum, Renew failed to show that Bornschlegl would have been fired because she included Anderton's name, in the absence of her protected activity.

Renew's contention that Bornschlegl was validly fired for violating the terms of an August 2019 discipline, which required her to "bring any grievances ... to her supervisor for resolution and avoid discussing her grievances with her coworkers" is equally flawed. Bornschlegl was directly fired for engaging in protected activity (i.e., having a dialogue with her coworkers about workplace safety), which is unlawful. Although this piece of the case seems to be relatively straightforward, it is now important to consider whether the Anderton controversy (i.e., listing Anderton on the April 26 KMail without express consent) somehow caused Bornschlegl to forfeit the Act's protections.

When an employee is disciplined for alleged misconduct while engaged in protected, concerted activity, the Board must determine "whether the conduct is sufficiently egregious to remove it from the protection of the Act." *Stanford Hotel*, 344 NLRB 558 (2005), citing *Aluminum Co. of America*, 338 NLRB 20 (2002). See also *Consumer Power Co.*, 282 NLRB 130, 132 (1986). When considering whether an employee's misconduct meets this standard, the Board examines: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the misconduct; and (4) whether the outburst was, in any way, provoked by an employer's unfair labor practice. *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979).

first learned about her lie at the hearing. First, it could have easily announced its intention to discipline Anderton, if it were truly surprised at the hearing by her lie and made this intention part of the record. Second, it's inability to uncover Anderton's lie flowed from its non-serious and flawed workplace investigation. In sum, Renew cannot reasonably ask to be held harmless for a workplace scenario that it engineered.

²⁹ It seems logical that a medical record should, minimally, relate to a patient's identity and their health condition; Bornschlegl's KMail involved none of these things. If brought to its logical conclusion, Renew's medical record definition would include a workplace email about a bake sale, picnic or charitable event.

³⁰ Additionally, if Renew genuinely believed that Bornschlegl KMail represented a serious falsification of a medical record, it would have also disciplined the other 10 employees who signed this alleged medical record and made Bornschlegl their agent, which was not done. Renew's focus had nothing to do with protecting the integrity of its medical records and had everything to do with ridding itself of a complaining employee.

In this case, the “place of discussion” factor mitigates against protection, inasmuch as the KMail was a work email that was received by management. The “subject matter” factor strongly favors protection given that the KMail sought to address important workplace health and safety issues. The “nature of the misconduct” factor, at best, mitigates slightly towards loss of protection because, as stated, Bornschlegl’s KMail remained respectful and productive and only negligently contained a minor factual error. The fourth factor does not come into play in this case. On balance, in light of its clearly protected tone and subject matter, the *Atlantic Steel* factors strongly weigh in favor of finding that the KMail did not lose the protection of the Act. Accordingly, the discharge, which was prompted by the KMail and an improper 2019 discipline that memorialized Renew’s unlawful prohibition against employees’ workplace discussions impermissibly impinged upon concerted, protected activity. See, e.g., *Stanford N.Y. LLC*, 344 NLRB 558 (2005).

Conclusions of Law

1. Renew is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act.

2. Renew violated §8(a)(1) by:

- a. Interrogating employees about their protected concerted activities.
- b. Barring employees from discussing workplace conditions amongst themselves.
- c. Maintaining and orally enforcing a workplace rule, which required employees to bring grievances directly to management and prohibited them from discussing grievances and workplace concerns with their coworkers.
- d. Firing Bornschlegl for engaging in protected concerted activities.

3. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

Remedy

The appropriate remedy for the violations found herein is an order requiring Renew to cease and desist from its unlawful conduct and to take certain affirmative action. Specifically, it must offer Bornschlegl full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. It must also make her whole for any loss of earnings and other benefits suffered as a result of the unlawful termination of her employment on April 28, 2020. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest compounded daily as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, it must compensate her for any adverse tax consequences of receiving a lump-sum backpay award, and file with the Regional Director a report allocating the backpay award to the appropriate calendar years. See *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). It must also compensate her for her

search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings. *King Soopers, Inc.*, 364 NLRB No. 93 (2016). The search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest compounded daily as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*, supra. It shall also remove from its files any references to the unlawful termination, and notify Bornschlegl in writing that this has been done and that this action will not be used against her in any way. Finally, Renew shall post the attached notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended³¹

ORDER

Renew Home Health, A Division of Maxus Health Care Partners, LLC, Fort Worth, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - a. Interrogating employees about their protected concerted activities.
 - b. Barring employees from discussing workplace conditions amongst themselves.
 - c. Maintaining and orally enforcing a workplace rule, which required employees to bring grievances directly to management and prohibited them from discussing grievances and workplace concerns with their coworkers.
 - d. Firing or otherwise discriminating against its employees for engaging in protected concerted activities.
 - e. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.
2. Take the following affirmative action necessary to effectuate the Act's policies
 - a. Within 14 days from the date of this Order, rescind its workplace rule, which required employees to bring grievances directly to management and prohibited them from discussing grievances and workplace concerns with their coworkers.
 - b. Within 14 days from the date of the Board's order, offer Bornschlegl full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

³¹ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

c. Make Bornschlegl whole for any loss of earnings and benefits suffered as a result of the April 28, 2020 discriminatory termination of her employment, in the manner set forth in the remedy section above.

d. Make Bornschlegl whole for her reasonable search-for-work and interim employment expenses, in the manner set forth in the remedy section above.

e. Compensate Bornschlegl for the adverse tax consequences, if any, of receiving a lumpsum backpay award, and file with the Regional Director for Region 16, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

f. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of the Board's order.

g. Within 14 days of the date of the Board's order, remove from its files any reference to the unlawful April 28, 2020 termination of Bornschlegl, and within 3 days thereafter, notify her in writing that this has been done and that those actions will not be used against her in any way.

h. Within 14 days after service by the Region, post at its Fort Worth, Texas facility and other satellite facilities within Texas the attached notice marked "Appendix."³² Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2019.

i. Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

³² If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated Washington, D.C. November 30, 2021

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A handwritten signature in black ink, reading "Robert A. Ringler". The signature is fluid and cursive, with the first name "Robert" and last name "Ringler" clearly distinguishable. It is positioned above a horizontal line.

Robert A. Ringler
Administrative Law Judge

10

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT interrogate our employees about their protected concerted activities.

WE WILL NOT bar our employees from discussing workplace conditions amongst themselves.

WE WILL NOT maintain and orally enforce a rule, which requires our employees to bring grievances directly to management and prohibits them from discussing grievances and workplace concerns with their coworkers.

WE WILL NOT fire or otherwise discriminate against our employees for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our rule requiring employees to bring grievances directly to management and prohibiting them from discussing grievances and workplace concerns with coworkers.

WE WILL offer Ann Bornschlegl full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Ann Bornschlegl whole for any loss of earnings and benefits suffered as a result of our unlawful termination of her employment on April 28, 2020.

WE WILL also make Ann Bornschlegl whole for her reasonable search-for-work and interim employment expenses.

WE WILL also compensate Ann Bornschlegl for the adverse tax consequences, if any, of

receiving a lump-sum backpay award, and file with the Board's Regional Director a report allocating the backpay award to the appropriate calendar year.

WE WILL also remove from our files any reference to Ann Bornschlegl's unlawful April 28, 2020 discharge and notify her in writing that this has been done and that it will not be used against her in any way.

**RENEW HOME HEALTH, A DIVISION
OF MAXUS HEALTH CARE
PARTNERS, LLC,**
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

819 Taylor Street, Room 8A24, Fort Worth, TX 76102-6178
(817) 978-2921, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/16-CA-260038 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND
MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS
CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE
REGIONAL OFFICE'S COMPLIANCE OFFICER (682) 703-7489.